Similarly inducement to turn from criminal ways into honest living can take several forms and will have to depend to a greater extent on the attitude of the offender and his suitability for any particular type of reformation.

The case before the learned President, however, concerns a worldly man, 30 years of age, the manager of a trading company and, no doubt, by the prevailing standards of living, a wealthy man. His initial offer of bribe, before any haggling, stood at $1,000. He proferred the bribe boldly and was even prepared to host any corrupt officer in his own house in Kuala Lumpur and there to cultivate ties with people who would join him in a conspiracy to defeat the law and cheat the public. The learned President was therefore right in holding that in a corruption case involving commercial firms a custodial sentence is an appropriate remedy. Fines will not deter the rich and wealthy from committing corruption if they get the impression that the same riches that they use to perpetrate the offence can buy them freedom out of the courthouse.

It was also contended by defence counsel that the appellant was enticed into committing the offence by the small compound fee offered by the R.I.M.V. officer. I cannot find any merit for this argument. Other than the comparison between the $18,000 maximum punishable fine and the compound fee of $850, counsel did not disclose what was the normal compound fee payable as compared with the fee offered to his client. In any event the low compound fee, in my view, would only serve to discourage corruption as it removes undue pressure on the offences and makes it more attractive to compound the offences rather than pay additional sums as gratifications.

Counsel drew my attention to the case of *Public Prosecutor* v. *Datuk Tan Cheng Swee & Anor.*[16] where the court imposed a fine of only $2,000 in respect of an offence carrying a heavier maximum penalty. I think the distinguishing factors between that case and the present one is that in *Datuk Tan Cheng Swee's* case the punishment was imposed by the Federal Court following the reversal of the order of acquittal by the High Court. The Federal Court, not having had the opportunity of seeing and hearing the witnesses including the accused, was in a considerably disadvantageous position on the question of sentence. *Dato Tan Cheng Swee's* case is, no doubt, a case of exceptional leniency shown by the Federal Court to an appellant. But when a conviction is substituted for acquittal at the appellate stage and when the appellate court has no opportunity of witnessing the trial proper including the conduct of the accused, such attitude of leniency is not entirely unexpected. This case, I do not think, is intended to be the yardstick for sentences involving corruption.

The circumstances there are quite different from our present case. We are not asked here to impose a sentence but to interfere with the sentence already passed by the trial court. As such our consideration here is based on entirely different principles. Perhaps another factor of significance is that *Datuk Tan Cheng Swee's* case involved a certain technicality.

Counsel finally drew my attention to the case of *Ng Kok Jooi* v. *Public Prosecutor*[17] in which Arulanandom J. drew distinctions between the givers and takers of bribes. With respect, to this distinction should be added another — between the givers themselves — that is the ones who give the bribes with one hand whilst having the other twisted at his back (the ones referred to by Arulanandom J.) and the other category who, with both arms outstretched, alluringly reach out for the more injudicious officers of the Government to *proffer bounteous* sums of unsolicited bribes. This second category of givers can be more harmful than the takers themselves to our system of orderly government. The measure of punishment to be imposed on them should bear some proportion to the malignity present in the mind of such offender. As Gordon-Smith J. pronounced in *Rex* v. *Teo Cheng Lian*[18] at page 17:

> "bribery and corruption of officialdom is like a cancer which may grow and destroy the whole body as, I conjecture, is illustrated by recent events in China. Operative treatment at the commencement may or may not be the cure but it is worth trying."

It is an established principle of our criminal law that an appellate court will not alter the sentences of the trial court unless the sentences are manifestly wrong and that such sentence should not be interfered with merely because the High Court might pass a different sentence — see *Public Prosecutor* v. *Fam Kim Hock*[19] and *Rex* v. *Teo Cheng Lian, supra.*

I do not detect any manifest error on the part of the President in law or in considering the facts of this case and I do not think either that an imposition of 6 months' imprisonment out of the maximum of 60 months for such a serious offence to be in any way excessive.

I would accordingly dismiss the appeal both against the denial of his retraction of plea as well as against sentence.

The cross-appeal by the prosecution for inadequacy of sentence is likewise dismissed.

Appeal and cross-appeal dismissed.

Solicitors: *Manjeet Singh & Co.*

LOY CHIN HEI v. PUBLIC PROSECUTOR

[O.C.J. (Wan Yahya J.) May 6, 1981]
[Malacca — Miscellaneous Criminal Application No. 2 of 1981]

Criminal Law and Procedure — Bail — Offence under Dangerous Drugs Act, 1952 — Restriction on bail absolute.

The accused applied for bail pending disposal of the charge against him. He had been charged with an offence under section 6B(1)(a) of the Dangerous Drugs Act, 1952.

Held: the restriction on bail under section 41B of the Dangerous Drugs Act is absolute and neither the court below nor the High Court has power to admit to bail any person charged thereunder with any offence punishable with death or more than five years' imprisonment or even for lesser terms when the Public Prosecutor certifies that it is against the public interest to allow bail.

Cases referred to:-

(1) *Sulaiman bin Kadir* v. *Public Prosecutor* [1976] 2 M.L.J. 37.

(2) *Che Su binti Daud* v. *Public Prosecutor* [1978] 2 M.L.J. 162.

CRIMINAL APPLICATION.

F.H. D'Cruz for the applicant.

C.W. Chan (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wan Yahya J.: This is an application by a person accused of an offence under section 6B(1)(a) of the Dangerous Drugs Act, 1952, for bail pending disposal of the charge against him. He had been earlier produced before the President of the Sessions Court, Melaka on April 15, 1981 but he was denied bail by the learned President in view of section 41B of the Act.

At the commencement of hearing before this court his counsel, Mr. Hilary D'Cruz, with his usual precision, laid down two points for consideration of appeal, as follows: —

(i) Whether section 41B of the Dangerous Drugs Act would make the offence non-bailable or preclude bail; and

(ii) In either of these two events whether the High Court is precluded from exercising its discretionary powers over bail.

Counsel first drew the subtle distinction between a non-bailable offence and an unbailable offence. He contends that non-bailable offences, as defined under "bailable offence" in section 2 of the Criminal Procedure Code include all offences other than "bailable offence." He suggested, by reference to the end of the 1st Schedule of the Code, that the legislature had laid down that all offences, including those outside the Code, should be either bailable or unbailable offences. Following this reasoning, counsel argued, the offence under section 6B(1)(a) of the Dangerous Drugs Ordinance would therefore fall under "non-bailable offence."

It is of particular interest to note that, although the Criminal Procedure Code makes a specific definition of "bailable offence" the draftsman deliberately avoided the use of that term in section 387 of the Code and instead employs the words "person other than a person accused of a non-bailable offence" as those entitled to be released on bail. It would seem that the intention of the legislature is not only to confine this right to bail to bailable cases of the Penal Code only but to extend it to offences against other statutes as well. This, at first sight, may lend some support to counsel's argument. I accept the view that where any statutory offence other than the Penal Code is silent or makes no provision as to bail, then the First Schedule to the Criminal Procedure Code will apply and the offences can be classified either as bailable or non-bailable according to the provisions of the Schedule. However, the provisions only apply to cases where the particular statute creating the offence is silent on the question of bail. In my view, if provision is made in a later legislation, then the later provision will prevail over the provisions of the Criminal Procedure Code. The Code is not enacted with the absolute purpose of laying down a singularly mandatory procedure for all criminal offences but is intended for application to offences in which no provision for procedure is laid down. This intention is clear from section 3 of the Criminal Procedure Code, which reads:

> "All offences under the Penal Code shall be inquired into the tried according to the provisions hereinafter contained, and all offences under any other law shall be inquired into and tried according to the same provisions; *subject however to any written law for the time being in force regulating the manner or place of inquiring into or trying such offences.*" (The emphasis is mine.)

A non-bailable offence is no doubt an offence in respect of which the accused may be refused bail, but it is not an absolutely unbailable offence because the court has been given the discretionary power to grant bail in certain circumstances and, in the case of offences punishable with life imprisonment or death, for special reasons. The High Court, it would appear by section 394, has absolute power to grant bail. However, this discretion is, as indicated earlier, only exercisable where no specific provision exists in the statute creating the offence. In our present case the provision for bail does exist. Section 41B has the effect of making the offence under the Dangerous Drugs Act an absolutely unbailable offence.

Mr. D'Cruz's next argument is that even if section 41B of the Dangerous Drugs Ordinance has the effect of rendering the offence absolutely unbailable, the section was intended to restrict the discretionary power of bail by the court having original jurisdiction only and in this case the Sessions Court and not the High Court. He made particular reference to the case of *Sulaiman bin Kadir* v. *Public Prosecutor,*[1] but I am unable to see how it could be of much assistance here. Perhaps counsel's intention is to illustrate from the *obiter* of Harun J. at page 38 to the effect that when a statute creates an offence it should also include provision for bail and that the power to grant bail should properly be conferred on the particular court given jurisdiction to try it. Both points, to my mind, do not suggest the confinement of such power to the trial court only.

It has also been urged upon me to adopt the course taken in the case of *Che Su binte Daud* v. *Public Prosecutor*[2] where Gunn Chit Tuan J., apparently in exercise of the powers under sections 388 and 389 of the Criminal Procedure Code, admitted to bail an accused person charged under section 39B(2) of the Dangerous Drugs Act, an offence punishable with death or life imprisonment. Judgment in *Che Su's* case was given barely 4 days after section 41B of the Dangerous Drugs Act came into effect. This and the obvious absence of reference to, or even any mention made of, section 41 by the learned judge in his judgment, points out strongly to the possibility that the matter was missed and was neither raised nor discussed by the parties before the learned judge. I am convinced that had the learned judge's attention been drawn to the provisions of this newly enacted law, his decision would have been entirely different.

I have had several occasions to look at section

41B of the Dangerous Drugs Act and it appears to me that the section contains not only express provisions which make the offence absolutely unbailable but also expresses in unequivocal language the intention of the legislature to restrict the judicial discretion as contained in the Criminal Procedure Code and other judge made laws. The expression 'notwithstanding any written law or any rule of law', to my mind, would include the provisions of the Criminal Procedure Code and also judge made laws or judicial precedents on bail. Section 41B of the Dangerous Drugs Act, being a particular subsequent legislation, must be construed as having curtailed the discretion to grant bail in drug offences punishable with death or life imprisonment previously vested in the courts by an earlier general legislation, i.e., the Criminal Procedure Code. When an Act enacts something in general terms and afterwards another Act on a particular subject introduces in express terms special restrictions on that subject, then the rule of construction demands that the provisions in the subsequent particular legislation should prevail and the provisions of the earlier legislation deemed curtailed or restricted to the extent of its inconsistency with the later legislation but not necessarily repealed.

The discretion as generally given by sections 388, 389 & 394 of the Criminal Procedure Code has been effectively taken away from the courts, both the Subordinate and High Courts, by section 41B of the Dangerous Drugs Act. Disconcerting as it may be for us to witness the power of the courts, especially those relating to the liberty of the subject who is accused but yet to be proven guilty, being gradually whittled away by statute, yet when Parliament has expressed in unequivocal language its intention to curtail this discretionary power, the courts are not free to question its wisdom in providing for a deterrent procedure for an obviously baneful mischief to society, but must interpret and give effect to the law as it stands.

The restriction on bail under section 41B of the Dangerous Drugs Act is absolute. Neither the courts below, nor this court, now possess the power to admit to bail any person charged thereunder with any offence punishable with death or more than five years' imprisonment, or even for lesser terms when the Public Prosecutor certifies that it is against public interest to allow bail.

The application for bail is therefore refused.

Application refused.

Solicitors: *Vohrah & Tan Chee Lan.*

TAI TEIK ONN & ANOR. v. ONG EWE TE

[O.C.J. (B.T.H. Lee J.) September 7, 1981]
[Ipoh — Originating Motion No. 48 of 1979]

Administrative Law — Certiorari — Order of Rent Appeal Board — Appeal Board hearing appeal more than six weeks from receipt of memorandum of appeal — Question of fact — No lack of jurisdiction — No breach of natural justice — Control of Rent (Perak) (Rent Tribunal) Rules, 1967, r. 10(3).

Practice and Procedure — Application for certiorari — New ground relied on at hearing — No application made to amend statement — R.S.C., 1957, O. 53 r. 3.

In this case the applicants applied for an order of *certiorari* to quash an order by a Rent Appeal Board which had dismissed a claim by the applicants heard before the Rent Tribunal. The grounds relied for the relief sought were —

(i) The Rent Appeal Board lacked jurisdiction when it dismissed the appeal by the applicants against the order that the applicants vacate and give up occupation of the premises — as there was no evidence that funds were available at the filing of the application for the purpose of putting into effect the development;

(ii) The Rent Appeal Board was wrong in law in that it failed to consider that the Rent Tribunal closed the hearing without hearing the respondents in the Rent Tribunal Application (the applicants before the High Court) as to their defences.

At the hearing counsel for the applicants added a third ground relying on rule 10(3) of the Control of Rent (Perak) (Rent Tribunal) Rules, 1967, which reads —

> "The Appeal Board shall within six weeks from the receipt of the memorandum of appeal, hear and determine the appeal."

Counsel for the respondent objected to the third ground, being argued.

Held: (1) non-compliance by the Rent Appeal Board with the rules could not be said to go to the foundation of the jurisdiction of the Board. Remedy could have been obtained by way of mandamus;

(2) in this case what was suggested was that there was an error of fact which did not affect jurisdiction. Where the proceedings are regular upon their face and the inferior tribunal has jurisdiction, the superior court will not grant *certiorari* on the ground that the court below has jurisdiction to decide the matter. It cannot be deemed to exceed or abuse its jurisdiction merely because it incidentally misconstrues a statute nor will *certiorari* be granted to quash the decision of an inferior court within its jurisdiction on the ground that the decision was wrong in matters of facts;

(3) in this case the applicants had a reasonable opportunity of presenting their case and in any event there was no breach of natural justice.

Cases referred to:-

(1) *Chan Siew Kim* v. *Woi Fung Sheng Tim Medical Store & Anor.* [1978] 1 M.L.J. 144.

(2) *Seereelall Jhuggroo* v. *Central Arbitration and Control Board* [1953] A.C. 151.

(3) *South East Asia Fire Bricks Sdn. Bhd.* v. *Non-Metallic Products Manufacturing Employees Union & Ors.* [1980] 2 M.L.J. 165; [1980] 2 All E.R. 689.

(4) *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 A.C. 147.

(5) *Pearlman* v. *Harrow School* [1979] 1 Q.B. 56, 70.

(6) *Lee Kwee Foh Ltd.* v. *Yeong Choon Foong* [1969] 1 M.L.J. xxv.

(7) *Colonial Bank of Australasia* v. *Willan* (1874) L.R. 5 P.C. 417.

(8) *R.* v. *Nat Bell Liquors Ltd.* [1922] 2 A.C. 128.

(9) *Mak Sik Kwong* v. *Minister of Home Affairs (No. 2)* [1975] 2 M.L.J. 175.

(10) *Pahang South Union Omnibus Co. Bhd.* v. *Minister of Labour & Manpower & Anor.* [1981] 2 M.L.J. 199.

ORIGINATING MOTION.

Lim Boon Seng for the applicants.

V.W. Balasingam for the respondent.

Cur. Adv. Vult.

B.T.H. Lee J.: This is an application by the applicants for an order of *certiorari* to quash an order made by the Rent Appeal Board for the District of